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SUBJECT: PERUVIAN REACTION TO DEPARTMENT'S SOFA TEXT

REF: 06 STATE 197183

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Summary:  
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11. (SBU) Pol Mil Officer and MAAG Chief met with Ambassador Bellina, Political Advisor to the Ministry of Defense and Director of Policy and Strategy, on December 20 to discuss the Department's proposed SOFA text. Bellina reiterated the Peruvian position that any SOFA should be grounded in the Vienna Convention and the 1952 US-Peru Military Agreement. He then enumerated the outstanding issues, categorizing them according to their level of difficulty as: technical matters, points for negotiation, and issues difficult to resolve because they would involve legal/constitutional changes. Bellina noted that the GOP was hiring an eminent international jurist to examine ways in which the 1952 agreement can be used to reach a SOFA with the U.S. End Summary.

12. (SBU) Pol Mil Officer and MAAG Chief met with Ambassador Bellina, Political Advisor to the Ministry of Defense and Director of Policy and Strategy, on 12/20/06 to discuss the Department's proposed SOFA text. Bellina repeated the Peruvians' basic stance, that the best way to achieve a SOFA is to ground desired changes in the Vienna Convention and the 1952 US-Peru Military Agreement. Bellina then gave us his assessment of the outstanding issues, dividing them by difficulty into three categories:

-Technical matters that could likely be worked out soon or are already granted in practice by the GOP;

-Points that required negotiation;

-Items that would be difficult for Peru to concede due to conflicts with existing law and/or the constitution.

13. (SBU) Bellina's bird's-eye view of the SOFA challenges should not be taken as a negotiating position, but rather his experienced understanding of where things likely stand. He also stated that the MOD was hiring an outside international legal jurist, Juan Jose Ruda of the Catholic University, to peruse our proposed text and see how it could best be covered by the Vienna Convention and the 1952 US-Peru Agreement on Military Cooperation.

14. (SBU) Bellina said that the following points should be

easy to continue in practice and to add to our dip notes or a possible SOFA:

-- U.S. military personnel should have no problem obtaining immunities equivalent to those according to the administrative and technical staff (A and T status) of a Diplomatic Mission under the Vienna Convention. (In effect, this enables U.S. personnel to avoid Peruvian jurisdiction and civil/criminal charges from actions taken in the line of duty.)

-- Peru already recognizes US drivers licenses for 90 days, a time period which covers almost all exercises and deployments.

--Recognition of U.S. professional licenses should not be a problem, but the Ministry of Health requires a formal accreditation process.

--U.S. Armed Forces personnel can wear uniforms and bear arms when carrying out their official duties.

--Tax exemptions for imports or exports of personal property, equipment, supplies, training, etc. by U.S. personnel involved in approved deployments should not be a problem, since the Embassy already enjoys this privilege, though it would have to be coordinated ahead of time through the Office of Privileges and Immunities at the Ministry of Foreign Affairs.

-- U.S. military forces already enjoy freedom of movement and use of the radio spectrum. Bellina did not think it would be difficult to spell out these items in future diplomatic notes. He did say, however, that access to the radio spectrum needed to be further detailed. The present text says that U.S. Armed Forces "can use the radio spectrum." He suggested that this be changed to read that the U.S. would do this "in consultation with the Government of Peru."

15. (SBU) Bellina said that the following items are likely negotiable:

--Yearly agreements that list a series of exercises and deployments with weapons.

--Exemption from Customs charges or inspections would be possible, but would require previous coordination with Customs.

--U.S. aircraft and vessels could likely be freed from boarding and inspection, though Bellina recommended that we add language stating that this exemption applied &when on official duties in Peru and that such exemption would be obtained "with prior coordination" between the USG and the GOP.

--The United States "shall pay reasonable charges for services requested and received at rates no less favorable than those paid by the Armed Forces of Peru."

16. (SBU) Bellina said the following would be difficult to achieve:

--Having US Military personnel enter Peru with only United States identification and travel orders. Bellina said that since the immunities granted to U.S. personnel are based on the Vienna Convention, and hence on status as administrative and technical personnel attached to the Embassy, they must have a passport with an official visa to have A&T status.

--Peru will not agree to explicit language that gives the USG exclusive criminal jurisdiction over U.S. military personnel while they are in the country, since this would appear to derogate the powers of the Peruvian courts. Instead, he pointed out, A&T status essentially grants the same privileges, but does so by offering immunity rather than by canceling or limiting Peruvian courts' criminal jurisdiction over DOD personnel in Peru's sovereign territory. To do the latter would require constitutional changes, to which the

Peruvian Congress would never agree, Bellina concluded.

--Exemption from all tolls and transit fees would be difficult to achieve, since some such fees are levied by private owners like Jorge Chavez airport or the Port Authority (ENAPU), both independent corporations. Peruvian government official vehicles, with the exception of police vehicles or military troop transports, pay road tolls. U.S. vehicles escorted by Peruvian police and military vehicles would likely be waved through, but a permanent exemption would be difficult to achieve since MOD and Armed Forces vehicles pay tolls.

--Bellina said that tax exemptions for articles and services acquired in Peru and for those acquired by contractors would be difficult to achieve. He said the GOP would need to get a legal opinion on how this would be squared with Peru's tax laws. Regarding exemptions for US contractors, Bellina asked if the phrase referred to anyone contracted by the U.S. or U.S. citizen contractors.

17. (SBU) On this last point, the Department's text needs clarification. Bellina stated that this type of exemption should be possible for U.S. citizen contractors, but not for Peruvian or third country national contractors. He mentioned that we might present all DOD purchases as U.S. Embassy purchases to take advantage of the tax benefits already granted to the Embassy by the 1993 exemption law.

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Comment:  
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18. (SBU) In contrast to an initial early December meeting in which Bellina was dismissive of a SOFA based on the draft model text, in the December 20 meeting we found encouraging elements in Bellina's list, particularly in Peru's commitment to hiring an international jurist. His comments are especially germane given that he was the Director for National Security and Defense in the Ministry of Foreign Affairs prior to assuming his current position as political advisor to the Minister of Defense. A professional diplomat who knows the nuances of Peruvian law, Bellina understands the larger context of what we are requesting in this SOFA text.

POWERS